

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ALIA MARIA CACERES, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LAZARO ROJAS CACERES,

Respondent-Appellant,

and

JANICE CATHERINE TURNER,

Respondent.

UNPUBLISHED

September 25, 2008

No. 282637

Livingston Circuit Court

Family Division

LC No. 07-011613-NA

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In the Matter of JACOB ROBERT TURNER,  
ANNA JEAN TURNER and ALIA MARIA  
CACERES, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JANICE CATHERINE TURNER, a/k/a JANICE  
CATHERINE JONES,

and

LAZARO ROJAS CACERES and DARYL  
WAYNE TURNER,

Respondents.

No. 282732

Livingston Circuit Court

Family Division

LC No. 07-011613-NA

Before: Markey, P.J., and Whitbeck and Gleicher, JJ.

PER CURIAM.

In these consolidated appeals, respondents Lazaro Rojas Caceres and Janice Catherine Turner appeal as of right a circuit court order terminating their parental rights pursuant to MCL 712A.19b(3)(c)(i) [the conditions leading to the adjudication continue to exist with no reasonable likelihood of rectification within a reasonable time given the children's ages], (g) [irrespective of intent, the parents failed to provide proper care and custody and no reasonable likelihood exists that they might do so within a reasonable time given the children's ages], and (j) [given the parents' conduct or capacity, the children likely would suffer harm if returned to the parents' custody]. We affirm.

### I. Facts and Proceedings

On January 9, 2007, Dorothy West, the maternal grandmother of the three involved children, advised Child Protective Services (CPS) that respondent-mother had abandoned the children. The children described to a CPS worker that respondent-mother bought, sold and used "all kinds of drugs" in their presence, and that they had been evicted from their home. One of the children reported that respondent-father had physically abused JRT.<sup>1</sup> Respondent-mother's oldest child advised CPS that respondent-father "treat[ed] them like dogs."<sup>2</sup> The children claimed that respondents failed to enroll them in school and did not provide them with food or financial support. On January 12, 2007, a CPS worker filed a petition containing the allegations made by West and the children, and further alleging that respondent-mother had an "extensive" history of CPS involvement dating back to 2001. The petition also averred that respondent-father had a criminal history that included convictions of delivery or manufacture of a controlled substance in 2002, twice operating under the influence of alcohol in 2004, and fleeing a police officer in 2004.

On January 12, 2007, a referee conducted an emergency removal hearing. Respondent-mother waived the referee's determination whether probable cause existed to support the petition's allegations, and the referee placed the children in West's temporary custody. The referee observed that respondent-father was incarcerated in Battle Creek.

On January 18, 2007, the referee conducted an adjudication. Respondent-father remained incarcerated and did not attend. Respondent-mother offered a no contest plea to the allegations in an amended petition, including that (1) she had bought, sold and abused various prescription

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<sup>1</sup> Respondent Caceres fathered AMC, one of the minors involved in this case. Daryl Wayne Turner, who is not a party to this appeal, fathered the other two children here at issue. The singular term "respondent-father" thus hereinafter refers solely to Caceres.

<sup>2</sup> The circuit court declined to terminate respondent-mother's parental rights to her oldest child, finding that termination did not serve that child's best interests.

drugs in her children's presence, (2) respondent-father had physically abused one of the children, (3) she had a history of protective services involvement, (4) after being evicted, she moved from motel to motel, and (5) she left the children in West's care without advising West of her whereabouts.

Respondent-father appeared at a dispositional review hearing conducted on February 23, 2007, and signed an affidavit of paternity regarding AMC, the youngest of the involved minor children. He reported that he still was incarcerated, but had an expected release date in early March 2007. At the hearing, respondent-mother agreed to the provisions of a parent-agency treatment plan that required her to (1) participate in substance abuse testing and treatment, (2) complete a psychological examination, (3) obtain lawful employment and adequate housing, (4) complete a money management or budgeting class, and (5) attend parenting classes or parenting counseling. At a dispositional review hearing on March 16, 2007, respondent-father agreed to a similar parent-agency treatment plan requiring him to (1) obtain and maintain adequate housing and employment, (2) obtain a psychological examination, (3) participate in and comply with a parenting education program, and (4) complete a substance abuse assessment.

At a May 30, 2007 dispositional review hearing, the referee reviewed several reports regarding respondents' failures to comply with their parent-agency agreements.<sup>3</sup> Mark Perkins, a CPS worker, testified that respondent-mother had failed to cooperate with drug screens "since the end of April and because she missed several times they closed it out." Perkins advised the referee that he would "reopen" respondent-mother's drug testing, and requested that respondent-mother submit to a hair sample test immediately after the hearing. Perkins additionally urged respondents to attend parenting classes or counseling, and voiced his expectation that respondent-father would complete a drug assessment. The circuit court, on the basis of the referee's recommendation, ordered that (1) respondent-mother submit to a drug screen immediately after the hearing, (2) respondent-father undergo a substance abuse evaluation, (3) respondents participate in parenting classes or counseling, and (4) respondents have supervised parenting time.

On August 28, 2007, the referee conducted a permanency planning hearing. The record reveals that the referee considered various reports, the parent-agency agreements, and updated case service plans.<sup>4</sup> Respondent-mother reported that she and respondent-father had been in a car accident four days earlier, and that an ambulance had taken her to a hospital. Respondent-mother believed that respondent-father also had been hospitalized, but she did not know his current whereabouts. Michela Subjeck, a DHS worker, reported that respondents "both have been in non compliance with all aspects of the parent agency treatment agreement since definitely the last court hearing." Subjeck further indicated that respondents had failed to comply with the drug testing ordered at the prior hearing, had not participated in parenting counseling, did not visit the children in conformity with the court's order, failed to verify

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<sup>3</sup> The CPS workers' reports are not contained within the record supplied to this Court.

<sup>4</sup> Most of these documents were not provided to this Court. We urge the circuit court in the future to include in the record provided to this Court all hearing exhibits.

housing or employment, and had not contacted the DHS since May 2007. Respondent-mother explained her noncompliance by admitting that she had “continuing dependence on opiates.” Respondent-mother insisted that she did attend a drug rehabilitation program, but conceded that she lacked proof of her attendance. Respondent-mother additionally asserted that “[e]verything I do [I] have to get funding for you know through this and that. It’s hard to get funding.” Subjeck responded that the DHS referred respondent-mother to a funded drug treatment program in Livingston County, and had given her the telephone number for that program, which respondent-mother admitted to having received. Regarding respondent-father, Subjeck reported that he failed to comply with court-ordered drug screening and had not provided documentation of housing or employment. The circuit court suspended respondents’ parenting time and ordered petitioner to file a petition seeking termination of their parental rights.

Between September 11, 2007 and October 15, 2007, after respondent-mother and respondent-father pleaded guilty of unlawfully possessing a motor vehicle, respondent-mother was incarcerated. At a review hearing conducted on October 17, 2007, respondent-mother reported that respondent-father remained incarcerated. On November 1, 2007, petitioner filed a petition seeking termination of respondents’ parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j).

The circuit court held a termination hearing on December 12 and 13, 2007. Respondent-mother admitted that she had not obtained employment, failed to attend parenting classes, located no stable housing, and planned to continue her relationship with respondent-father. She conceded that after being released from a brief stay in an inpatient detoxification program in May 2007, she relapsed. Respondent-mother claimed to have initiated outpatient substance abuse treatment in October 2007, but could not document her attendance. She explained that she had lived in “a lot of different places” since January 2007, and currently resided with her sister. Respondent-father admitted that he was incarcerated and had not made plans for housing after his release. He testified that he was on parole for a 2004 felony conviction, and did not know whether he would face a parole violation hearing arising from the 2007 charge. A DHS worker testified that respondent-father neither completed a substance abuse assessment nor cooperated with substance abuse testing.

At the conclusion of the hearing, the circuit court terminated respondents’ parental rights pursuant to subsections (c)(i), (g) and (j). The circuit court further opined that it had “seen nothing, nothing that would show that it’s not in the best interest to terminate on these three children.”

Respondents now appeal as of right.

## II. Standard of Review

Respondents challenge the sufficiency of the evidence supporting the statutory grounds for termination invoked by the circuit court. We review for clear error a circuit court’s decision to terminate parental rights. MCR 3.977(J). The clear error standard controls our review of “both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision qualifies as clearly erroneous when, “although there is evidence to support it, the reviewing court on the entire evidence is left

with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *In re Trejo, supra* at 356.

### III. Analysis of Evidence Supporting Termination

We first consider respondent-mother’s contention that the circuit court lacked clear and convincing evidence supporting termination because petitioner failed to provide her with the services necessary to facilitate reunification. The agency charged with the care of a child must report to the circuit court the efforts it “made to rectify the conditions that caused the child’s removal from his or her home.” MCL 712A.18f(1). Before the court enters a dispositional order, the court must “state whether reasonable efforts have been made to prevent the child’s removal from his or her home or to rectify the conditions that caused the child’s removal from the home.” MCL 712A.18f(2). In general, the petitioner has to make reasonable efforts to rectify the conditions that brought the child into care by adopting a service plan. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). The statute does not mandate services in all situations, but requires the petitioner to justify its decision not to provide services. *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000).

Respondent-mother agreed to comply with the requirements of a parent-agency treatment plan on February 23, 2007. At a review hearing on May 30, 2007, Perkins informed the referee that respondent-mother had not provided a drug screen since “the end of April,” and that the service provider had closed her file. Perkins offered to reopen the file if respondent-mother submitted to a drug test immediately after the hearing concluded. But respondent-mother failed to appear for the drug screen, and neglected to contact Perkins or the DHS between May 30, 2007 and August 28, 2007.

We find no merit in respondent-mother’s claim that petitioner denied her services, or failed to justify its decision to withhold services. The record reflects to the contrary that petitioner offered respondent-mother services and agreed to pay for drug screens. Although petitioner offered respondent-mother a second chance to receive drug abuse counseling services, she elected not to undergo the prerequisite drug screen. Given these circumstances, we find that reasonable reunification efforts were made. Furthermore, the record clearly and convincingly establishes that the conditions leading to the adjudication continued to exist more than 182 days after entry of the initial dispositional order, and we detect no reasonable likelihood that respondent-mother’s ongoing housing and substance abuse difficulties would be “rectified within a reasonable time considering the child[ren]’s age[s].” MCL 712A.19b(3)(c)(i).<sup>5</sup>

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<sup>5</sup> The evidence regarding the children’s arrival in foster care, respondent-mother’s dismal participation in services, her ongoing substance abuse problem, and her lack of employment or stable housing likewise clearly and convincingly establishes MCL 712A.19b(3)(g), specifically that “without regard to intent, [respondent-mother] fails to provide proper care or custody for the child and there is no reasonable expectation that [s]he . . . will be able to provide proper care and custody within a reasonable time considering the” children’s ages.

We next consider respondent-father's claim that he was "never given the services to be able to be in compliance with the service agreement," and that he could not complete the parent-agency agreement's goals because his immigration status prevented him from holding full-time employment. Respondent-father signed a parent-agency agreement in February 2007. Aside from attending a psychological evaluation and submitting hair for drug testing, respondent-father demonstrated no effort toward complying with the agreement's remaining terms. Specifically, respondent-father failed to (1) attend parenting classes or parenting counseling, (2) obtain lawful employment and adequate housing, or (3) undergo a substance abuse evaluation. Respondent-father was incarcerated when the court assumed jurisdiction over his child, and he returned to jail 6-1/2 months later. He remained incarcerated at the time of the termination hearing. The record reveals that when respondent-father was not incarcerated, he made only minimal efforts to comply with the court's orders, and that he never contacted the caseworkers to discuss his immigration difficulties. In summary, our review of the record reveals that respondent-father made no efforts to rectify the conditions that brought his daughter into care, and that his multiple incarcerations made it impossible for him to maintain stable housing or otherwise support his daughter in the foreseeable future. The circuit court thus appropriately invoked MCL 712A.19b(3)(c)(i) and (g) as grounds for terminating respondent-father's parental rights.

We also conclude that the circuit court did not clearly err in terminating both respondents' parental rights pursuant to MCL 712A.19b(3)(j). The record clearly and convincingly demonstrates that respondents' continued use of alcohol and controlled substances, in combination with their tenuous living situation, posed a substantial risk of harm to the children if returned to respondents' custody.

Finally, respondents challenge the circuit court's best interests finding pursuant to MCL 712A.19b(5). Ample evidence supports the circuit court's finding that termination of respondents' parental rights would serve the children's best interests. During the year preceding the termination hearing, respondents failed to provide for the health, safety, support or well being of their children. The caseworker explained that when the children came into care, they "were in a very unstable situation," had been evicted from their home, moved from hotel to hotel, and did not attend school. The circuit court observed in its bench opinion that "stability and permanence" served the children's best interests. We find no clear error in the circuit court's conclusion that termination of respondents' parental rights was consistent with the children's best interests.

Affirmed.

/s/ Jane E. Markey  
/s/ William C. Whitbeck  
/s/ Elizabeth L. Gleicher